

### **Remarks**

Applicants have received and carefully reviewed the Office Action mailed May 7, 2007. Claims 1 and 4 have been amended; claim 2 has been canceled; claims 10-20 have been added. Support for the amendments and new claims is found in the specification, claims, and drawings as originally filed. No new matter has been added. Reconsideration and allowance of the pending claims are respectfully requested.

### **Oath/Declaration**

The Examiner has objected to the oath/declaration because the statement regarding disclosure of information material to patentability is missing. A substitute declaration containing the required statement is being obtained and will be filed as soon as it is received.

### **Obviousness-type Double Patenting**

Claims 1, 3, and 9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 11, and 13 of U.S. Patent No. 6,652,553. Independent claim 1, as now amended, appears to be patentably distinct from the claims cited in the '553 patent. Further, claims 3 and 9, which depend from claim 1, also now appear to be patentably distinct from the claims in the '553 patent. As such, applicants respectfully request withdrawal of this rejection.

### **Rejection under 35 U.S.C. § 102(b)**

Claims 1-5, 7 and 9 are rejected as being anticipated by Zhu et al. (US 5,577,993). Independent claim 1, as amended, recites "an actuator configured to move axially to move said first and second legs away from each other"; emphasis added. Zhu et al. do not appear to teach such a structure. The Examiner asserts that Zhu et al. teach an actuator 55 which is able to move the first and the second legs away from each other, referring to FIG. 4 for support. Applicants respectfully traverse the rejection.

Zhu et al. teach element 55 as handles that, when moved axially, appear to move the entire device in a proximal direction to lift the abdominal wall, with the blades 54 together. See FIG. 2 and column 7, lines 31-37 and 49-52. Zhu et al. teach moving handles 55 away

from each other (FIG. 9), toward each other (FIG. 6), and rotated (FIG. 5) independently, however such movements do not result in handles 55 being moved axially to move first and second legs away from each other, as was recited in original claim 2, and now recited in independent claim 1. Zhu et al. do not appear to teach each and every element of independent claim 1 or the claims dependent thereon, and thus cannot be deemed to anticipate the claims.

Further, there is no motivation for one of ordinary skill in the art to modify the device of Zhu et al. to achieve the claimed surgical tool. Reconsideration and withdrawal of the rejection are respectfully requested.

**Rejection under 35 U.S.C. § 103(a)**

Claims 6 and 8 are rejected as being unpatentable over Zhu et al. For at least the reasons set forth above, Zhu et al. do not appear to teach each and every element of independent claim 1, from which claims 6 and 8 depend. Further, there is no motivation for one of ordinary skill in the art to modify the device of Zhu et al. to achieve the device as claimed. Reconsideration and withdrawal of the rejection are respectfully requested.

New claims 10-20 recite elements not believed to be taught or suggested by Zhu et al.

Reconsideration and reexamination are respectfully requested. It is submitted that, in light of the above remarks, all pending claims are now in condition for allowance. If a telephone interview would be of assistance, please contact the undersigned attorney.

Respectfully submitted,

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By their Attorney,

Date: Aug 13, 2007

  
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